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09/369,980    07/30/99    GALLOWAY    D    24180-044002

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EXAMINER

DYE, R

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

07/27/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

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# Office Action Summary

Application No.  
**09/369,980**

Applicant(s)  
**Galloway et al.**

Examiner  
**Rena L. Dye**

Group Art Unit  
**1772**



☒ Responsive to communication(s) filed on May 3, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 17, 18, 20, and 21 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 17, 18, 20, and 21 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

1. The rejections of record as set forth in the last Office Action (paper no. 5) not repeated herein, have been withdrawn in view of Applicant's amendments to the present claims.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 17 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Babrowicz (5,837,335).

Babrowicz teaches a multiple layer polymeric film comprising a first barrier layer of PVDC- blend having first and second opposing surfaces; an adhesive layer disposed on each of the opposing surfaces of the first barrier layer; an a layer comprising ethylene vinyl acetate and disposed adjacent to the third layer or adhesive layer; and a fifth layer comprising a copolymer formed by the polymerization reaction with a single site catalyst and disposed adjacent to the layer of ethylene vinyl acetate. The outside layer is a blend of 80% homogenous ethylene/alpha-olefin. Refer to Table VI of column 25 and Figure 7.

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Babrowicz teaches that the term used herein "homogenous polymer" refers to polymerization reaction products of relatively narrow molecular weight distribution and composition distribution, and are typically prepared using metallocene, or other single-site catalysis (column 13, lines 5-18).

4. Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babrowicz (5,837,335).

Although Example VI specifically teaches PVDC-blend as the material for use in the barrier layer, Babrowicz discloses other materials for use as a barrier material, such as ethylene vinyl alcohol (EVOH) (column 9, lines 25-32). Therefore, it would have been obvious to one having ordinary skill in the art to have substituted the EVOH for the PVDC blend in the barrier layer.

Although Babrowicz fails to specifically teach the recited thicknesses of each layer of film, it would have been obvious to one having ordinary skill in the art to have varied the thicknesses of the film to have provided desired strength, flexibility and barrier properties.

#### ***Response to Arguments***

5. Applicant's arguments filed on May 3, 2000 have been fully considered but they are not persuasive.

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In response to Applicant's amendments to the present claims the rejections under 35 USC 112 have been withdrawn. Applicant's amendment to the specification "This application is a continuation of U.S. Application No. 08/481,684, filed June 7, 1995, now abandoned, which is a continuation-in-part application claiming priority of U.S. Application No. 08/082,226, filed June 24, 1993, now abandoned" is noted. It appears that Applicant intended to list 08/481,685 rather than 08/481,684 which does not appear to be related to the present patent application. With regard to U.S. Application No. 08/082,226 the Examiner has not been able to locate this application Serial No. in the chain of continuing data. The Examiner requests clarification or evidence that Serial No. 08/082,226 is part of the chain of continuing data.

The Babrowicz (US Patent 5,837,335) reference which was used to reject the present claims is a continuation in part of Serial No. 08/332,990, filed on November 1, 1994, as listed on the front of the patent. The Examiner has reviewed the parent application 08/332,990 and confirms that the parent application discloses that which was used in the child application US Patent 5,837,335 to reject the present claims. Therefore, the oldest effect filing date of that which was used to reject the present claims is November 1, 1994, and predates that which Applicant is claiming priority (US Application No. 08/481,684(5) filed on June 7, 1995). Therefore the Babrowicz reference continues to apply as prior art. Furthermore, since Applicant has not specifically addressed the art rejections on the merits, the rejections have been maintained.

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***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to R. Dye whose telephone number is (703) 308-4331.



Rena L. Dye  
Primary Examiner  
Tech Center 1700

R. Dye  
July 25, 2000